UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/469,949	12/21/99	LOVINGOOD	IM52/1001

S 2126

EXAMINER

PIERCE, J

ART UNIT	PAPER NUMBER
1771	4

DATE MAILED: 10/01/01

025280
MILLIKEN & COMPANY
920 MILLIKEN RD
PO BOX 1926
SPARTANBURG SC 29304

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/469,949	LOVINGOOD, SCOTT A.	
	Examiner	Art Unit	
	Jeremy R. Pierce	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 December 1999* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) *16-21* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

   I. Claims 1-15, drawn to a woven, non-union dyed fabric, classified in class 442, subclass 213.

   II. Claims 16-21, drawn to a method for producing a woven, non-union dyed fabric, classified in class 8, subclass 115.51.

2. Groups II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the woven, union-dyed fabric claimed can be made by another process. Specifically, fiber that is dyed before weaving can make a woven, non-union dyed fabric, rather than dying the fibers after the fabric has been woven, as is claimed by the Applicant in Group II.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with Charlotte Wilson on September 7, 2001 a provisional election was made with traverse to prosecute the invention of a woven, union-dyed fabric, claims 1-15. Affirmation of this election must be made by applicant in

replying to this Office action. Claims 16-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 5-6, and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by von der Eltz et al. (U.S. Patent No. 3,990,839).

Von der Eltz et al. teach a process for shadow dyeing polyester fabrics. In this process, polyester warp yarns are dyed with cellulose weft yarns that remain undyed (column 1, lines 16-36).

6. Claims 1, 4, and 11-13 rejected under 35 U.S.C. 102(b) as being anticipated by Gadoury (U.S. Patent No. 5,830,574).

Gadoury teaches that synthetic melamine fiber and cellulose fiber can be woven together and dyed so that either the synthetic fiber or the cellulose fiber is dyed and the other remains undyed giving a chambray appearance (Abstract). In one embodiment (column 6, lines 20-40), the synthetic melamine is dyed and the cellulose fiber remains undyed. As to claim 4, the fabric is woven into a plain weave (column 14, lines 65-66). As to claims 11-13, the examples disclosed in the patent use cotton that has a cotton count of 12 (column 14, lines 63-65).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 2, 3, 7-10, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over von der Eltz et al.

Von der Eltz et al. teach a fabric with dyed polyester warp yarns and undyed cellulosic weft yarn. However, von der Eltz et al. do not teach specific yarn sizes and fabric weights in the patent. It would have been obvious to one skilled in the art to select various yarn properties such as weight, yarn denier, cotton count, and stretch in order to produce a fabric that can be used for shirts, dresses, clothing, or other apparel applications, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Specifically, it would be obvious to select a stretch quality as in claim 2, a fabric weight as in claim 3, filament yarns with a certain denier as in claim 7, spun yarns with a certain cotton count as in claims 8-10 and 14, or a combination thereof as in claim 15 to obtain a desired fabric texture.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,661,116 to Barwick, III et al., U.S. Patent No. 5,487,936 to Collier, and U.S. Patent No. 5,109,131 to Nitsch, Jr.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jeremy R. Pierce
Examiner
Art Unit 1771

TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

September 26, 2001